

AMENDED IN SENATE MARCH 31, 2009

SENATE BILL

No. 705

Introduced by Senator Lowenthal

February 27, 2009

An act to ~~amend Section 65088.4 of the Government Code~~ add Section 1172 to the Labor Code, relating to ~~transportation~~ employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 705, as amended, Lowenthal. ~~Traffic congestion; infill housing.~~ *Employee rights: exhaustion of administrative remedies.*

Under existing law, where a statute provides an employment right and sets forth administrative procedures that must be followed to redress a violation of that right, an employee must first exhaust those administrative procedures before seeking redress from the courts in a civil action. Additionally, decisional law has required employees to exhaust an employer's administrative remedies to redress violations of statutory law even where the statute creating the right does not require the exhaustion as a prerequisite to the filing of a civil action.

This bill would provide that exhaustion of an employer's internal administrative remedies or judicial review of a decision of an administrative agency is not a precondition for a civil action alleging a violation of a right that the Legislature determines to be based on a fundamental public policy of the state, unless the Legislature expressly requires the exhaustion of the employer's internal administrative remedies or judicial review of an administrative decision in the statute that establishes the cause of action. This bill would further provide that the results of an administrative adjudication by an employer regarding an allegation of a violation of an employee right that the Legislature determines to be based on a fundamental public policy of the state are

admissible as evidence in a civil action involving the same rights and parties.

~~Existing law requires the development, adoption, and updating of a congestion management program for each county that includes an urbanized area, as defined. The program is required to contain specified elements and to be submitted to regional agencies, as defined, for determination of whether the program is consistent with regional transportation plans. The required elements include traffic level of service standards for a system of designated highways and roadways.~~

~~Existing law defines an infill opportunity zone for purposes of the above-described provisions to mean a specific area designated by a city or county zoned for new compact residential or mixed use development, except as specified, within $\frac{1}{3}$ mile of specified transportation sites in counties with a population of over 400,000. Under existing law streets and highways in an infill opportunity zone are exempt from the level of service standards specified in the above-described provisions and instead the city or county is required to include them an alternate level of service standards or take other actions, as specified. Existing law provides that a city or county may not designate an infill opportunity zone after December 31, 2009.~~

~~This bill would eliminate the deadline for designating an infill opportunity zone.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1172 is added to the Labor Code, to read:
- 2 1172. (a) Exhaustion of an employer's internal administrative
- 3 remedies, such as a grievance procedure, or judicial review of a
- 4 decision of an administrative agency, is not a precondition for a
- 5 civil action alleging a violation of a right that the Legislature
- 6 determines to be based on a fundamental public policy of the state,
- 7 unless the Legislature expressly requires the exhaustion of the
- 8 employer's internal administrative remedies or judicial review of
- 9 an administrative decision in the statute that establishes the cause
- 10 of action.
- 11 (b) The results of an administrative adjudication by an employer
- 12 regarding an allegation of a violation of an employee right that
- 13 the Legislature determines to be based on a fundamental public

1 *policy of the state are admissible as evidence in a subsequent civil*
2 *action involving substantially the same rights and substantially*
3 *the same parties, unless otherwise expressly excluded by the*
4 *Legislature or in an applicable collective bargaining agreement.*

5 SECTION 1. ~~Section 65088.4 of the Government Code is~~
6 ~~amended to read:~~

7 ~~65088.4. (a) It is the intent of the Legislature to balance the~~
8 ~~need for level of service standards for traffic with the need to build~~
9 ~~infill housing and mixed use commercial developments within~~
10 ~~walking distance of mass transit facilities, downtowns, and town~~
11 ~~centers and to provide greater flexibility to local governments to~~
12 ~~balance these sometimes competing needs.~~

13 ~~(b) Notwithstanding any other provision of law, level of service~~
14 ~~standards described in Section 65089 shall not apply to the streets~~
15 ~~and highways within an infill opportunity zone. The city or county~~
16 ~~shall do either of the following:~~

17 ~~(1) Include these streets and highways under an alternative~~
18 ~~areawide level of service standard or multimodal composite or~~
19 ~~personal level of service standard that takes into account both of~~
20 ~~the following:~~

21 ~~(A) The broader benefits of regional traffic congestion reduction~~
22 ~~by siting new residential development within walking distance of,~~
23 ~~and no more than one-third mile from, mass transit stations, shops,~~
24 ~~and services, in a manner that reduces the need for long vehicle~~
25 ~~commutes and improves the jobs-housing balance.~~

26 ~~(B) Increased use of alternative transportation modes, such as~~
27 ~~mass transit, bicycling, and walking.~~

28 ~~(2) Approve a list of flexible level of service mitigation options~~
29 ~~that includes roadway expansion and investments in alternate~~
30 ~~modes of transportation that may include, but are not limited to,~~
31 ~~transit infrastructure, pedestrian infrastructure, and ridesharing,~~
32 ~~vanpool, or shuttle programs.~~

33 ~~(c) The city or county may designate an infill opportunity zone~~
34 ~~by adopting a resolution after determining that the infill opportunity~~
35 ~~zone is consistent with the general plan and any applicable specific~~
36 ~~plan.~~

37 ~~(d) The city or county in which the infill opportunity zone is~~
38 ~~located shall ensure that a development project shall be completed~~
39 ~~within the infill opportunity zone not more than four years after~~
40 ~~the date on which the city or county adopted its resolution pursuant~~

1 ~~to subdivision (c). If no development project is completed within~~
2 ~~an infill opportunity zone by the time limit imposed by this~~
3 ~~subdivision, the infill opportunity zone shall automatically~~
4 ~~terminate.~~